Stipulations

The following facts are agreed to and admitted by both ViSalus and Ms. Wakefield.

1.   Plaintiff Lori Wakefield is a citizen of Oregon and a resident of Clackamas County.

2.   Defendant ViSalus is a Nevada corporation with a principal place of business in Michigan.

3.   ViSalus is a multi-level marketing company, also known as direct selling or network marketing, that sells weight-loss products and dietary supplements. Such products have included at times a variety of "kits"—such as the "Balance Kit," "Shape-Kit," "Core Kit," "Transformation Kit," and "Challenge Kit," combining different products depending on customer choice—that customers choose based on what kind of result they're looking for, from losing weight to building muscle.

4.   ViSalus makes money primarily through its "promoters," independent contractors who sell ViSalus products through their own business networks.

5.   ViSalus supports and incentivizes promoters by building value in its products, opportunities and company, providing training and workshops, creating collateral marketing materials to help promoters sell the products, and offering enticing rewards for the highest-ranking promoters.

6.   Promoters must enroll with ViSalus, which requires submitting a promoter application either online (through ViSalus's website) or in print (and that information is manually entered into ViSalus's computer system). Consumers may purchase products directly from ViSalus by submitting a purchase form either through ViSalus's website or on a print form.

7.   Whether submitted online or in print, the promoter applications are identical and the process for enrollment has been the same since 2011.

8.   All active ViSalus promoters have access to an online "Vi-Net" account (provided they pay the fee for a Vi-Net account).

9.   ViSalus also maintains an internal online database—the "Exigo" system— which keeps live records of the information on individuals' Vi-Net accounts.

10.   In June or July 2012, ViSalus created and employed a team of outbound calling agents collectively referred to within the company as "Outbound Support."

11.   Although the original purpose of Outbound Support was to contact people who had attempted to purchase products but whose credit cards were declined, the agents eventually began to call customers to inform them of various marketing campaigns.

12.   While these campaigns varied in topic, the calls were made for the same general purpose: to retain customers and generate revenue for ViSalus.

13.   The Outbound Support team initially dialed telephone numbers manually using an Avaya telephone system. However, sometime in or around 2013 or 2014, ViSalus updated its Avaya system with a feature called the Proactive Outreach Manager ("POM"), which enabled it to place autodialed and agentless calls. ViSalus stopped conducting manually dialed mass-calling marketing campaigns once it had POM.

14.   In 2013, ViSalus began downsizing the company, reducing its overall number of employees.

15.   ViSalus placed calls through POM using a systematic two-step process: first, ViSalus created a contact list for the campaign, utilizing information from the Exigo system such as whether a customer had become "inactive;" then, an Outbound Support agent uploaded the contact list to POM and assigned it to run with the appropriate campaign.

16.   Once the contact list was uploaded to POM, the Outbound Support team could begin placing calls with the click of a button. Ex. A, Composite of POM Instructions (explaining that once you "[c]lick on the play button" all the caller would have to do is "verify Campaign in running").

17.   With POM, ViSalus used two campaign strategies: "Press One" calls (where a prerecorded or artificial voice instructed customers to "press [1] to be connected to a live person now"), and "voice casting" calls (where an audio clip played a prerecorded callback message). Ex. B, Excerpts of January 20, 2017 Deposition of Justin Call ("Call Dep.") at 98:23-24, 72:11-73:15.

18.   "Press One" and "voice casting" calls were all placed through POM.

3

19.   ViSalus's process for placing prerecorded calls remained the same until the Outbound Support team was dissolved in January 2016.

20.   Ms. Wakefield briefly signed up to be a ViSalus promoter in February 2012.

21.   Ms. Wakefield subsequently ended her affiliation with the company.

22.   Ms. Wakefield received calls from ViSalus in April 2015, but the exact number of calls received is in dispute.

23.   Each call was directed to a landline telephone. Each call was intended to sell ViSalus's products.

24.   At least two of the telephone calls may have been from a live person.

25.   Two of the telephone calls by ViSalus to the landline for the Wakefield residence in April 2015 may have used a prerecorded message.

26.   Ms. Wakefield received at least five calls from ViSalus between March 1, 2015 and May 30, 2015, but the Parties do not agree on whether those calls were from a live person or contained an artificial or prerecorded voice.

27.   Ms. Wakefield operated a home daycare for children in April 2015.

28.   On April 8, 2015, Ms. Wakefield first contacted plaintiff's counsel Stefan Coleman by email through his website.

EXHIBIT A

1) Start with an Excel report of the information you need relating to the contacts you want to make. You will want to include headers in the document to sort the information before loading it into Avaya.

These are the headers that you will want to include.

A/S Day, Order Total ($), Customer/Promoter ID#, Email, Language, First Name, Last Name, Customer Type (uPreferred/promoter), State, Country, Area Code, Phone Number, Time Zone, Troy Offset, Reason

You must be sure to have each of these categories even if you name them something different. Ex: You must have area code and phone number as separate columns. If you put them into one column, Avaya will not recognize the number and it will come back as invalid. The same goes for name. You must have separate columns for first and last name and not one column for both.

You must make sure to go through each column to look for inconsistencies or errors. This will help you later when loading the campaign through Avaya. Also, some errors will prevent you from being able to load the campaign if not fixed in Excel prior to that stage.

Once your spreadsheet is formatted and filtered correctly it is time to save the document.

THIS IS VERY IMPORTANT

Save the document as a "CSV (comma delimited)"

If you save it any other way, Avaya will not recognize it.

2) Open Avaya Contact Center Manager

Click on "Launchpad" at the top of the screen. Then, click "Outbound."

On the left side of the page, you will see "CCMM."   Click this to launch the Outbound client.

3) Choose the option on the left side of the screen "Create and Append." This will open a new screen.

Click on the "Campaign Settings Tab"

Click "Start Configuring New Campaign

    This will give you 2 options
        1) Create new campaign
        2) Create using previous campaign settings
                We use option 2 and then choose the name of a past campaign from which you would
like to use the settings for.
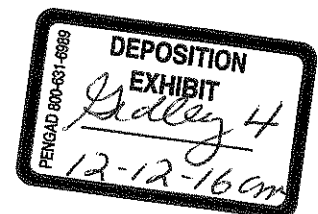
4) While still in the "Campaign Settings" tab, give a Name and Description to the campaign.

5) Choose a Campaign Start Date and Time

This will give you 2 options
  1) Start Immediately
  2) Start at – Date – Time (This option allows you to choose when to start the campaign if you do not want it to start immediately)

6) Call Priority – Set a number to identify the priority of the campaign.
  If you are only running 1 campaign, this will not matter. In that case, set the priority to 10, which is the lowest. Otherwise, prioritize as needed.

7) Agent Desktop Script – Choose the appropriate script for your campaign.

8) Click on "Additional Options" (can be found on the right side, middle of the screen

A) Dialer Settings – 3 options
  1) Manual Agent Dial
  2) Auto Dial Immediately (Progressive)
  3) Auto Dial After (Seconds) [insert time] - *If you choose this option, the time you choose must match a selection you will make in the next selection.

B) Dialer Misc.
  1) Enable Minimum Dial Time Seconds - *This is the number that must match the number from step above.
  2) Trunk Access Code – Insert the number that will dial before the area code. Ex. For domestic calls "91"

C) Custom Fields – Make all the fields that were used as headers in the Excel spreadsheet can be found in this list. If not, "Add" them.

D) Misc. Additional Options
  1) "Campaign End Date and Time" – Enable if applicable
  2) "Campaign Dialing Hours"
      Using the drop down box, select "Use Customers Time Zone"
      Start Time = 8:00 AM
      End Time = 9:00 PM
  3) "Disposition Codes"
      Put a check in the box to all dispositions you would like to use for your campaign.

9) Click on the "Call Settings" tab at the top of the page

A) Click Import Call Data -> Import Data Source -> Import from Text File -> Next -> Select our Excel File -> Next

B) Field Delimiter = "Character ,"

C) Enable Record Selection = YES

Start Record = 1

End Record = "X" total number of contacts. This number can be found below. "X" Records in file (Data Preview Below). Make sure X=X

D) Click Next

10) Map the File Fields to the OCMT Fields – Here you will drag and drop the Field # to the corresponding OCMT Field. You can use the window below the mapping field to make sure every column has a header.

*No need to label the field that corresponds with State

-> Finish

"Data in selected rows may not have imported correctly as file format not constant" -> OK

11) You are now back in the "Call Settings" tab. If there are any contacts with a red mark next to them, select "Delete Checked Calls." This is caused by a formatting error in Excel.

12) Click "Skillset Assignment" Tab, found on bottom of screen.

"Attach This Skillset to Rows…	Where…	This Field is…	Equal to"
Choose the skillset name that matches the campaign name you will use in Contact Manager		Choose any empty column Ex: INTL CODE	Leave Blank

*Make sure the check the box next to "Only update Empty Rows"

-> Update -> Continue -> OK

13) Time Zone Tab (on bottom)

Check the box next to "Use my time zone." This will run a time zone verification test.

14) Campaign Activation Tab -> Create Campaign

Click "OK" to fix any errors. If any calls fail validation, click "Delete Checked Calls"

Campaign Activation Tab -> Create Campaign

15) You campaign is now created and should be loading.

A) Click "Modify Campaign" on the left

B) Make sure there is a green circle next to the campaign you just created

C) Pause or cancel other campaigns if needed

Building a contact list

1) Start with an Excel report of the information you need relating to the contacts you want to make. You will want to include headers in the document to sort the information before loading

it into POM.

The Headers are very important. The Excel headers or campaign attributes is how POM recognize what's in each cell.

2) Correct Header Names and order

When building the contact list your header must appear in the excel spreadsheet as it does in POM. Always lead with the "Id" header or attribute first. "Id" should always appear in cell A1 in your excel spreadsheet. In the "Id" column starting with cell A2 should be the number 1. The "Id" column will list the number of contacts in the list. Depending on what info you want displayed in POM you will need an attribute for it.
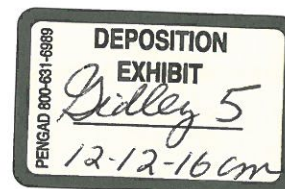
id	customerid	firstname	lastname	Email	phonenumbe	phonenumber1ctrycode
1	3570812	Michael	Frenzl	frenzl.stoffwechselkur@gmail.com	15252723312	DE
2	3662296	Jager-Hacl	Hannelor	kofuma@gmx.de	1739145524	DE
3	3667092	Kris	Fragde01	kfde01@fragmob.com	3346793434	DE
4	3668809	Ursula	Lehmann	ulrikelemann1@gmx.de	1634161000	DE
5	3675343	Ute	Opperma	ute.oppermann68@gmail.com	3907775953	DE
6	3679490	Thomas	Sureck	maler-parketti-ug@web.de	1726722721	DE
7	3687614	yasin	kouanda	yasin.kouanda@hotmail.de	40350715425	DE
8	3696105	Thomas	Goesswei	peterpiper83@hotmail.com	4.36645E+11	AT
9	3701107	Sarah	Un	aylin69balhas@gmail.com	15788862429	DE
10	3702479	Katrin	Thomas-V	westerwaldmausl@aol.com	2687921846	DE
11	3707215	Helmut	Unterwair	helmut123@hotmail.de	15202851432	DE
12	3710799	Melek	Tokmak	Structure@vi	0163 1353694	DE
13	3716021	Galina	Savenko	savenkogalina43@yahoo.com	72619759201	DE
14	3716660	Verena	Klaus	piero38@hotmail.de	1774178688	DE
15	3732997	Sabine	Nohamm	bine7878@gmx.at	6605434661	AT
16	3746046	Lukas	schelberg	schelberger@hotmail.de	6641687007	AT
17	3761264	Jovan	Djokic		69917232744	AT
18	3761983	Stefan	Glisic	stefa_24.11.93@hotmail.com	69910346849	AT
19	3762096	Marc	Schulz	r_ama_g@hotmail.de	17631164105	DE
20	3762213	Manuela	Gloss	manuela.gloss@gmx.at	6601411541	AT
21	3762593	Omar	Mohamec	omar.mohamed-ali@live.at	6.7688E+11	AT
22	3763536	Bernhard	Maxa	b.maxa@gmx.at	6766583601	AT
23	3763695	Rudolf	Lehner	rudistar28@hotmail.com	4.36505E+11	AT
24	3765061	Maurice	Dietimele	K.dietimeier@gmx.de	17631380292	DE
25	3768813	Jörg	Noreiks	bahr290776@gmx.de	1704576336	DE

3) phonenumber1ctrycode

You have to type out the header as it appears, "phonenumber1ctrycode". In the column "phonenumber1ctrycode" you want the country code number and not the country letter abbreviation. For a list of Country Codes click the following link http://countrycode.org/

4) **Saving the Contact list**

After you have edited the contact list to your campaign specification, next step is to save. When saving the campaign, Go to V drive; Outreach Support; POM Contact Lists and click Save As Type: CSV (MS-DOS)

THIS IS VERY IMPORTANT

Save the document as a "CSV (MS-DOS)"

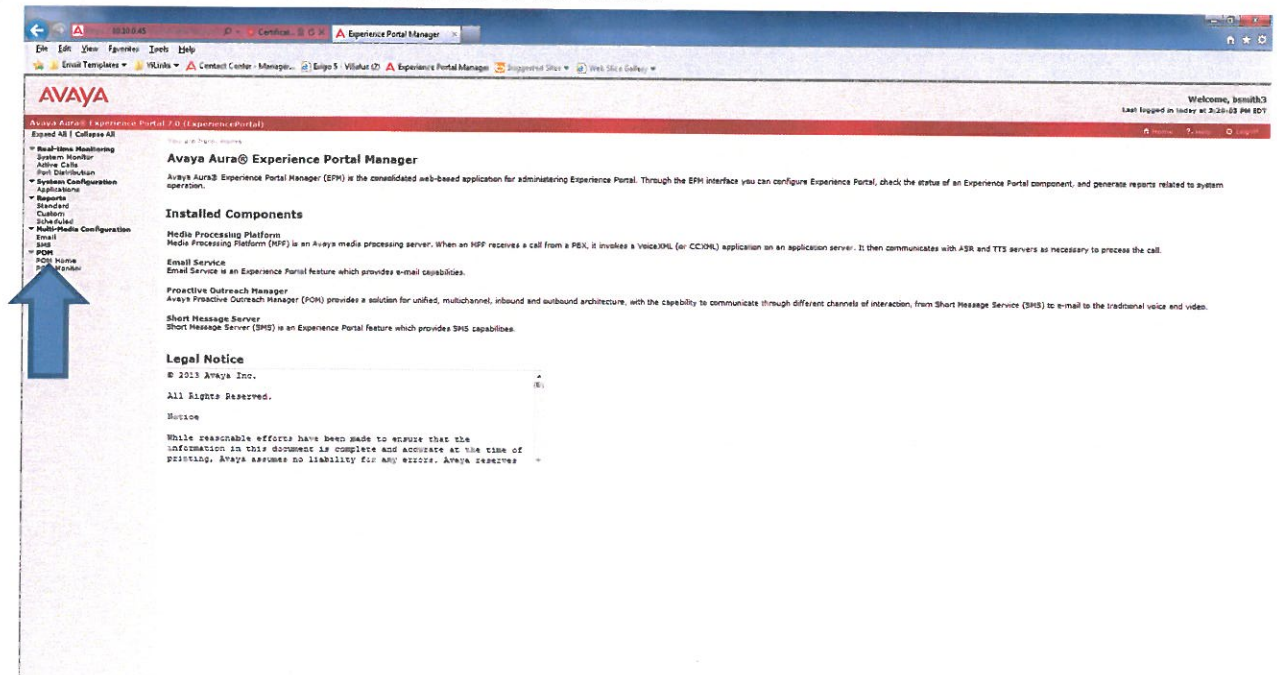If you save it any other way, POM may not recognize it. Name the contact list after the campaign name, include how many contacts (use K to represent thousands) and date saved in the **File Name**.
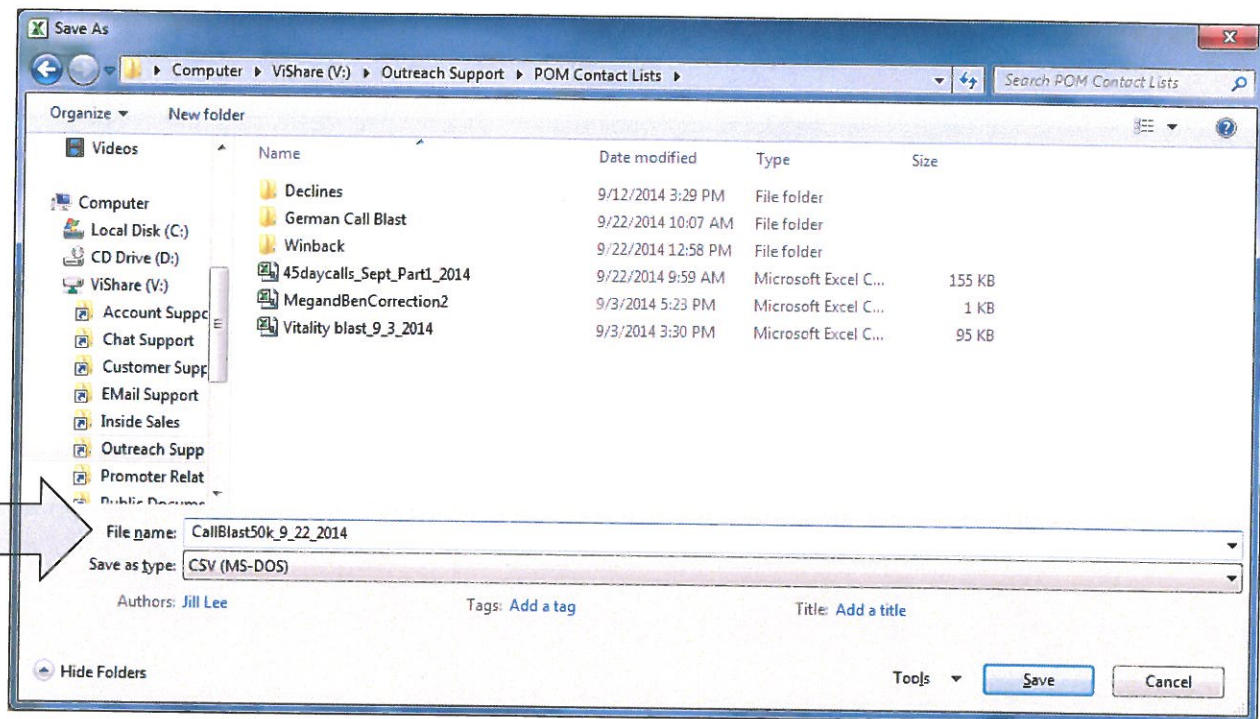
Finally click the **Save** button

Uploading contact list to POM

1) Log in to POM
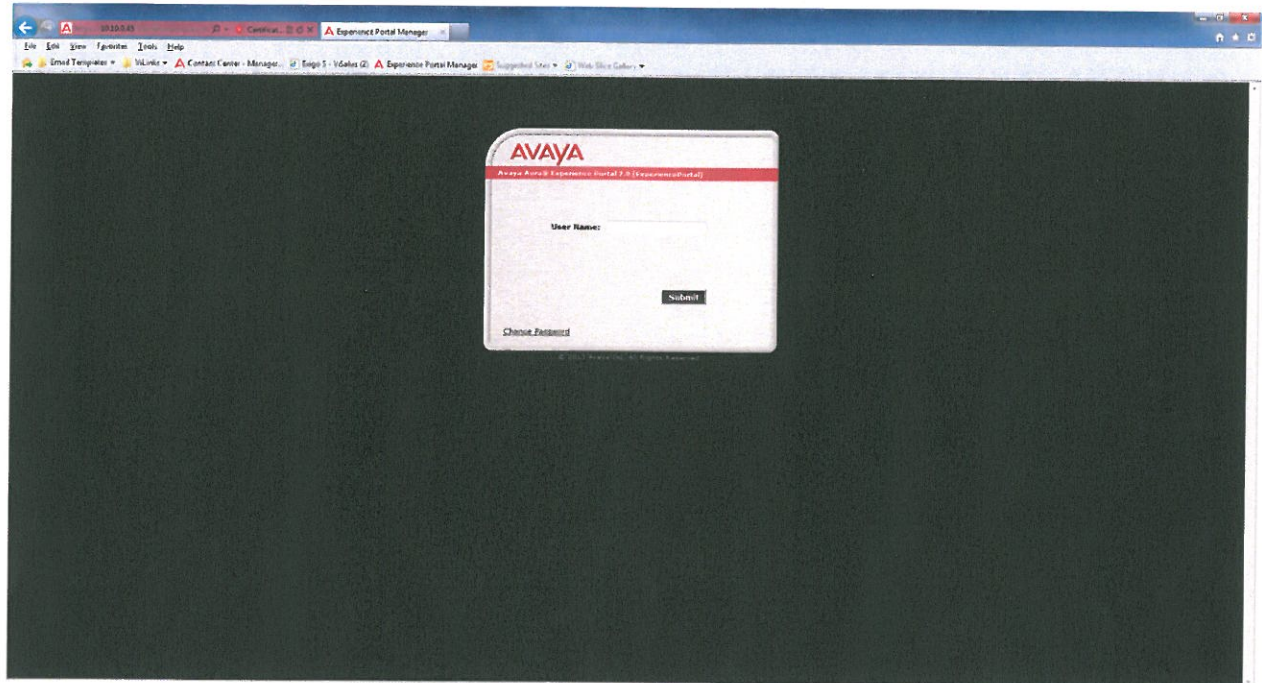
2) Select POM Home on the left hand side of the screen

3) Hit the down arrow in the **Contacts** tab at the top middle of the screen and select **contacts**.
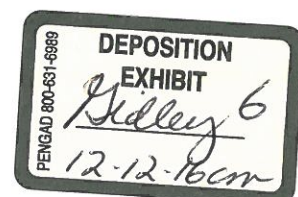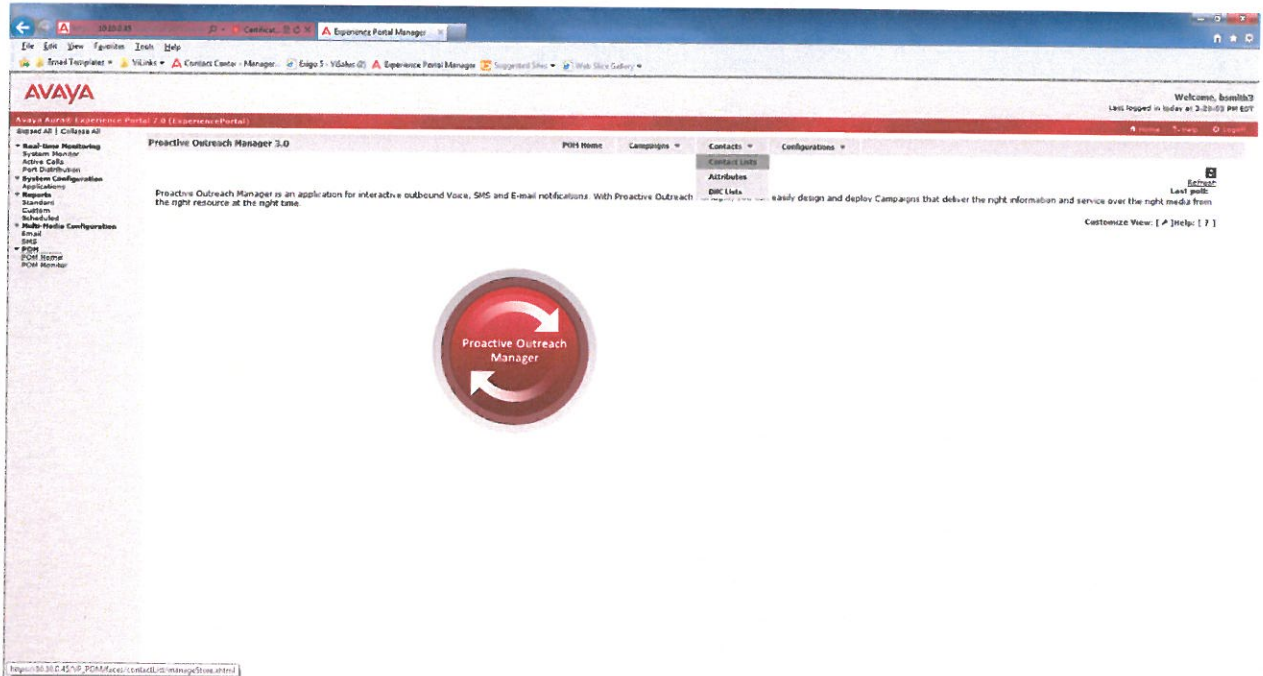
4) Click add at the bottom of the screen
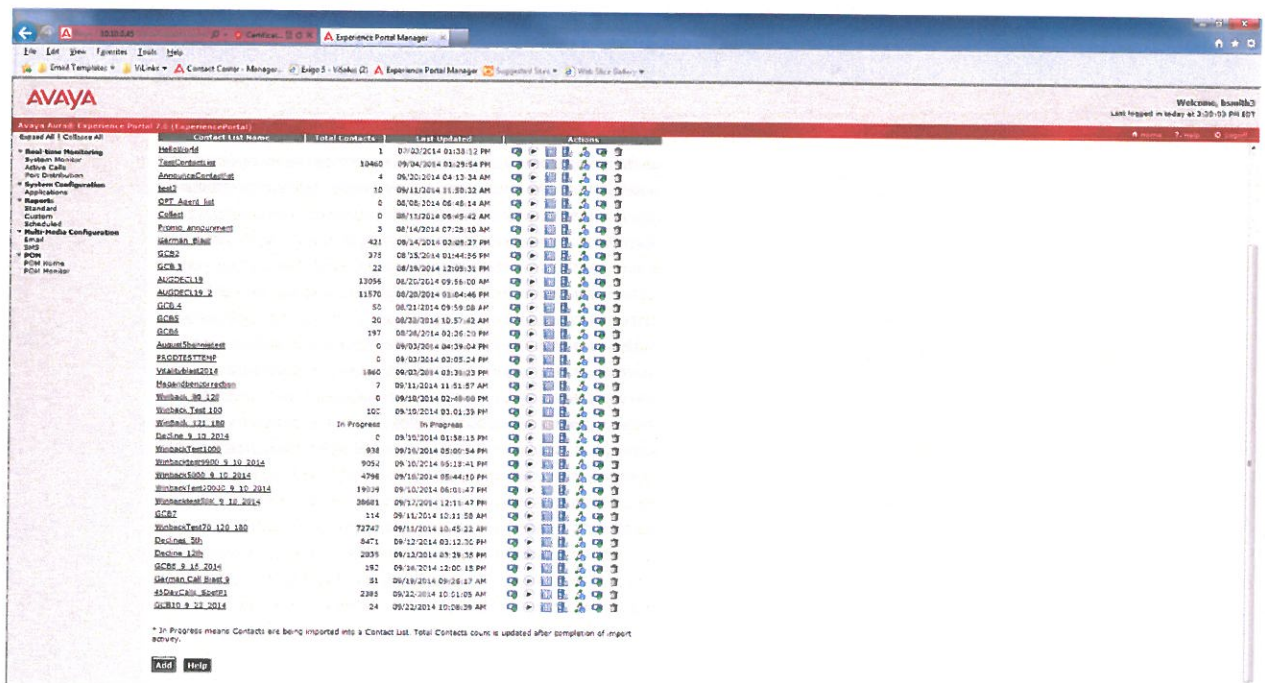
5) Add New Contact List screen appears.
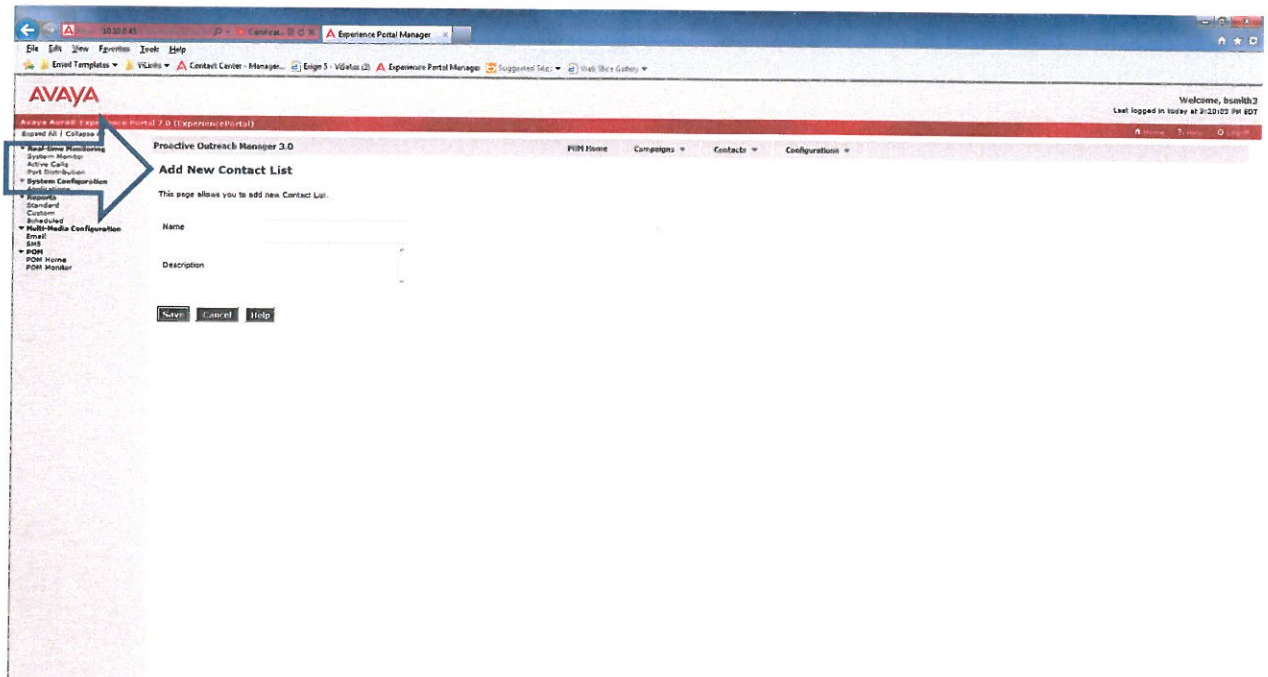
6) Name your contact list
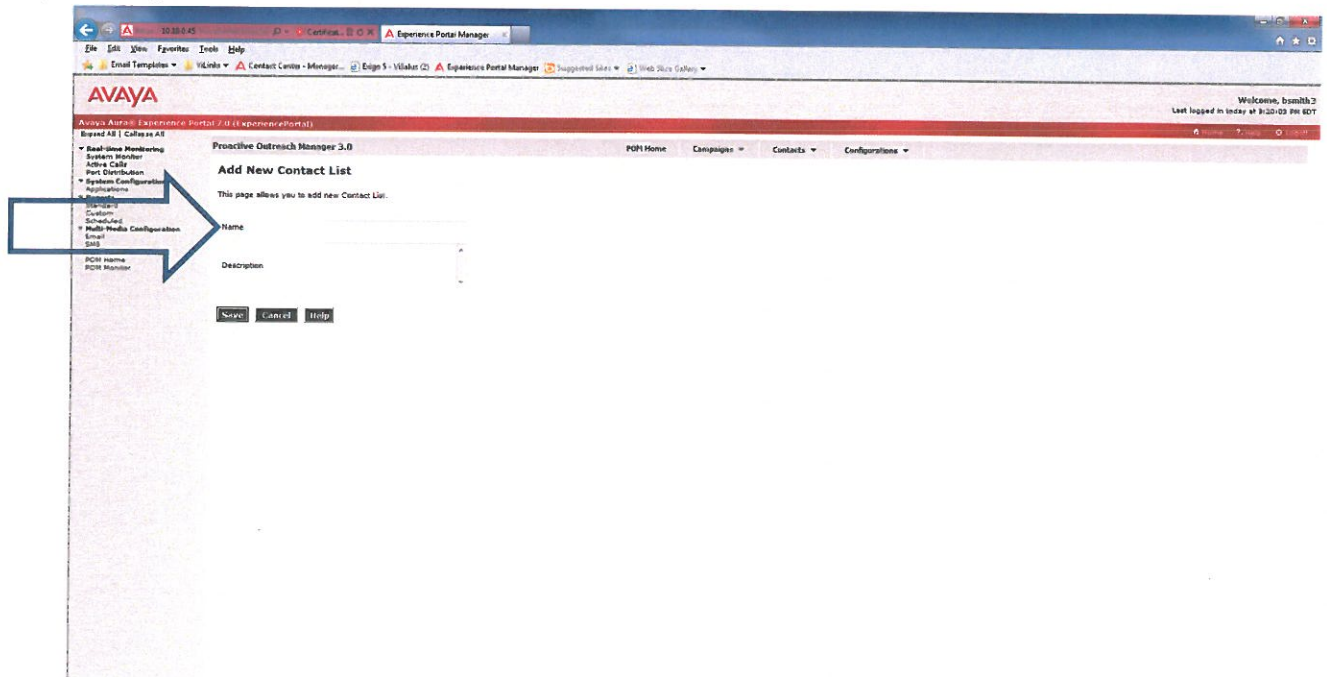
7) Give your list a description
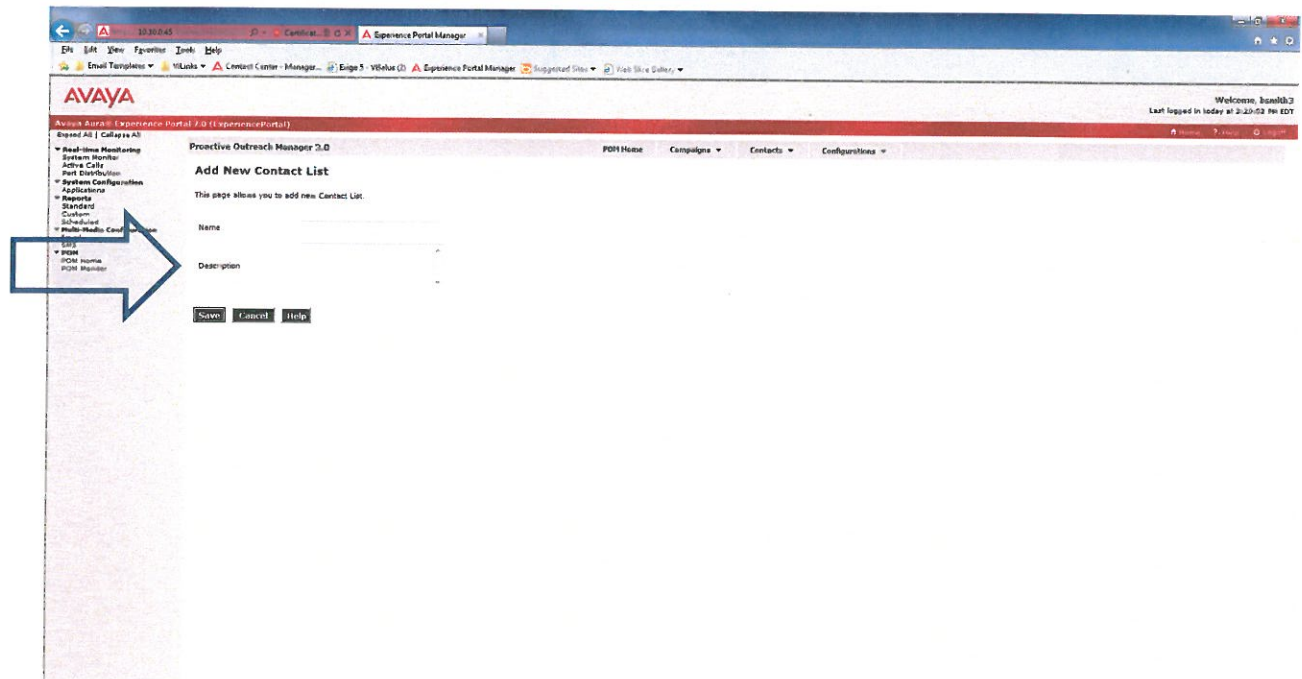
8) Click the Save tab
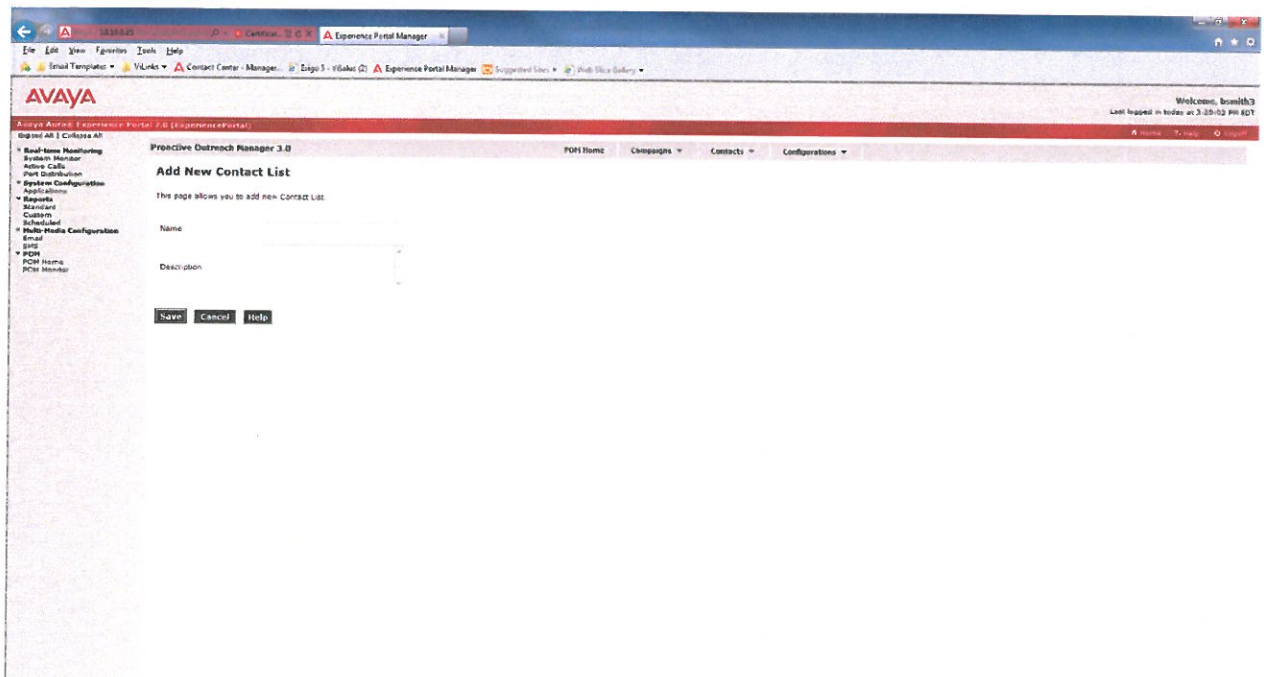
9) After clicking Save you will be brought to this screen to upload contacts now. Click Upload Contacts Now
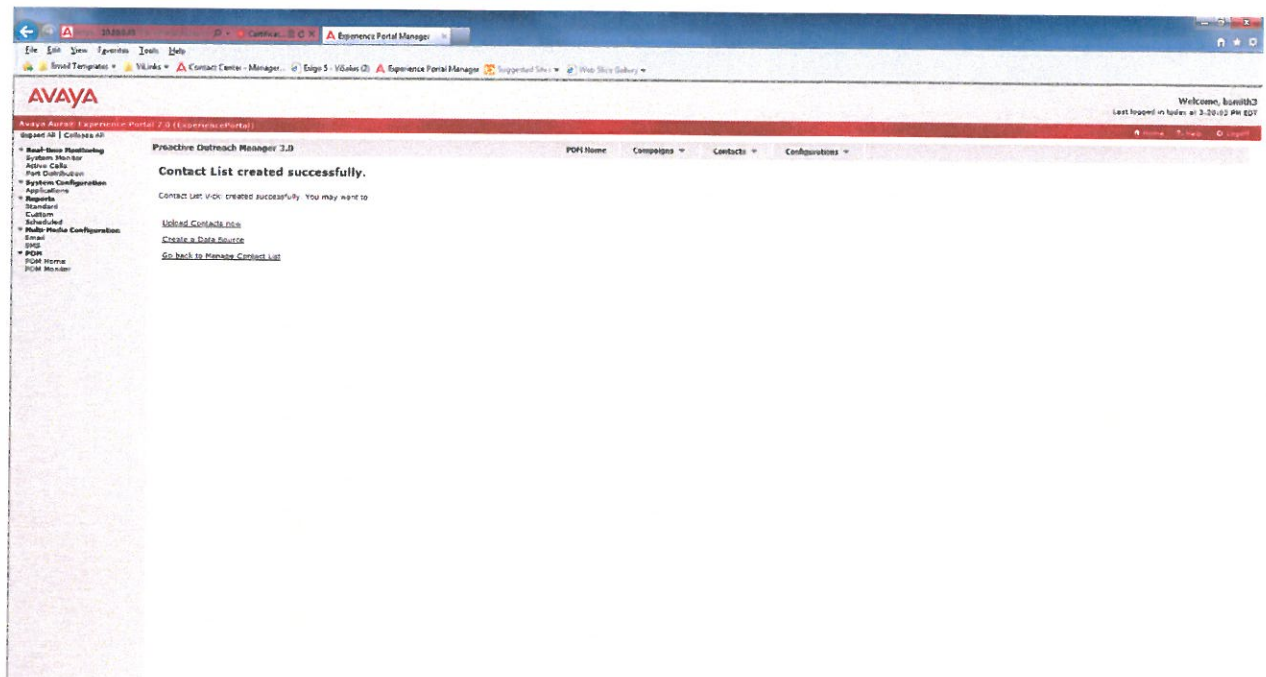
10) Click Browse and select your contact list from the V drive
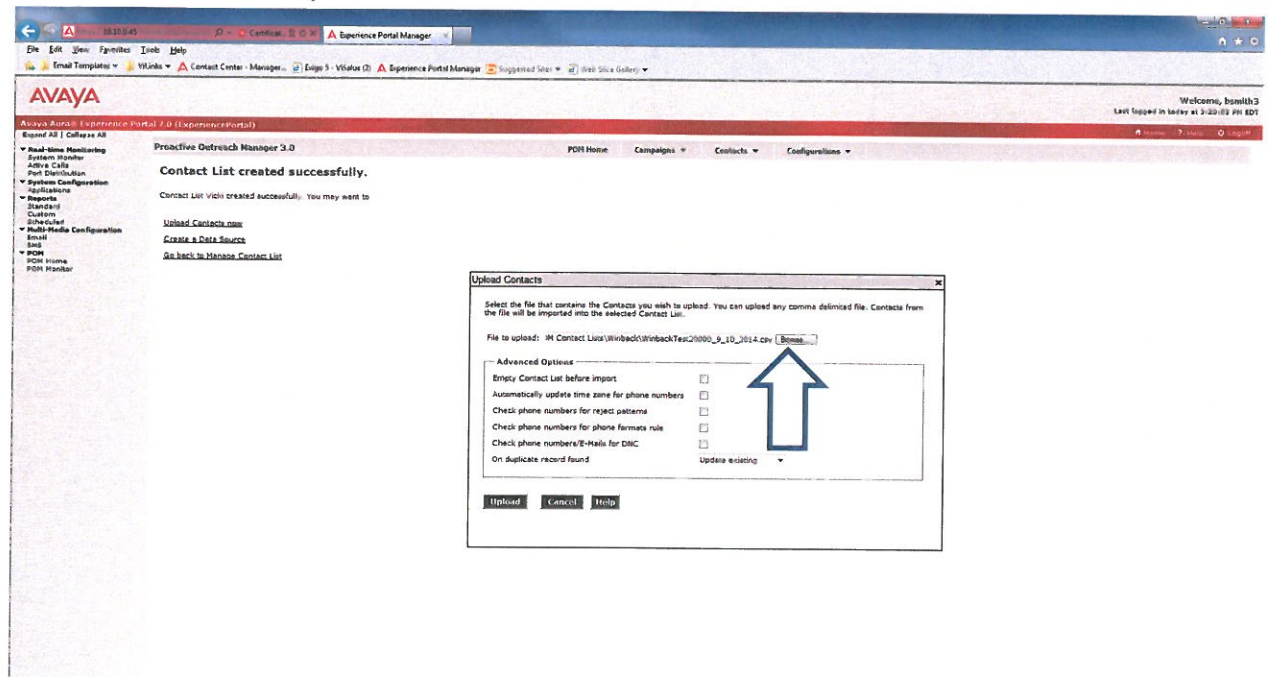
11) Check the box that says Automatically update time zone for phone numbers
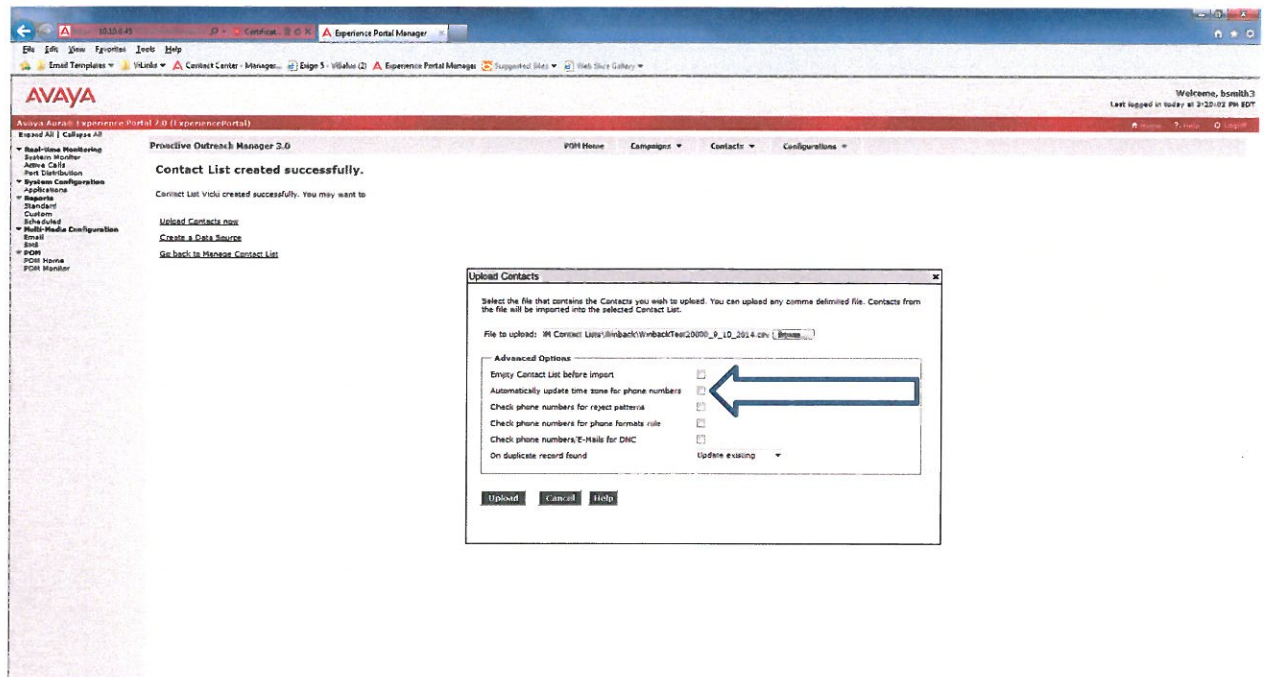
12) Check the box that says Check phone numbers/E-Mails for DNC
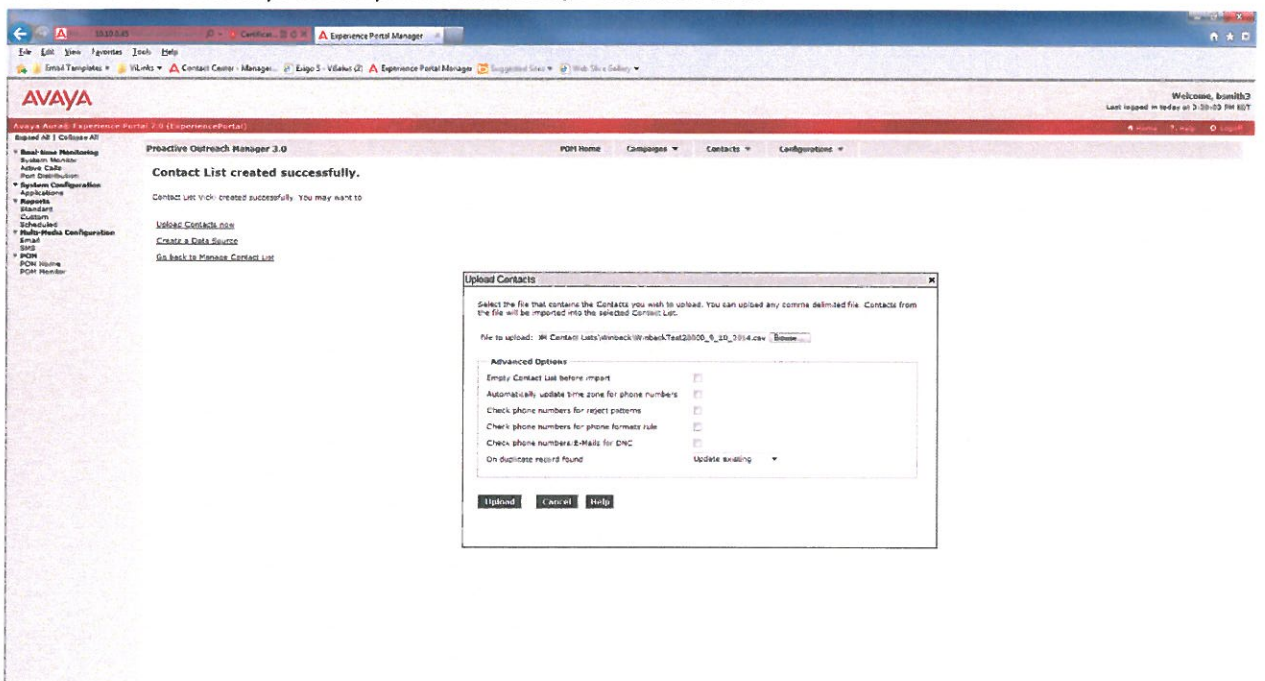
13) Select Ignore new contacts and then upload
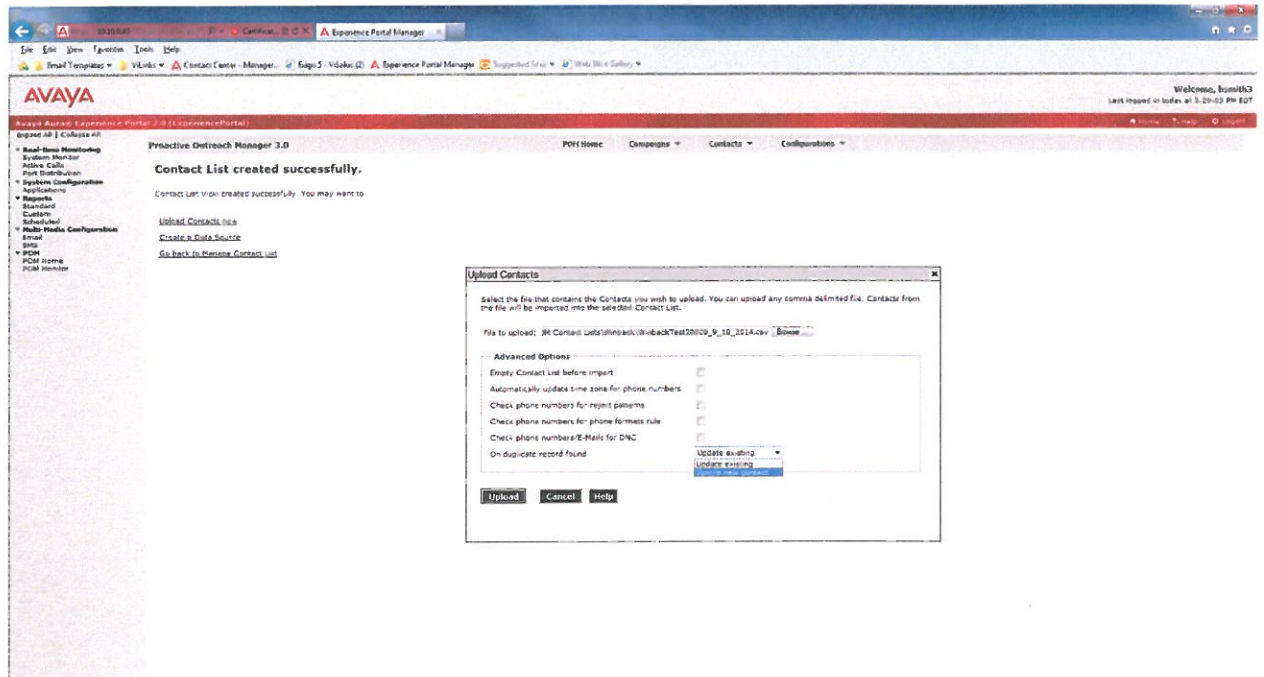
14) On the Contact Lists screen you will see that your list is In Progress of being uploaded.
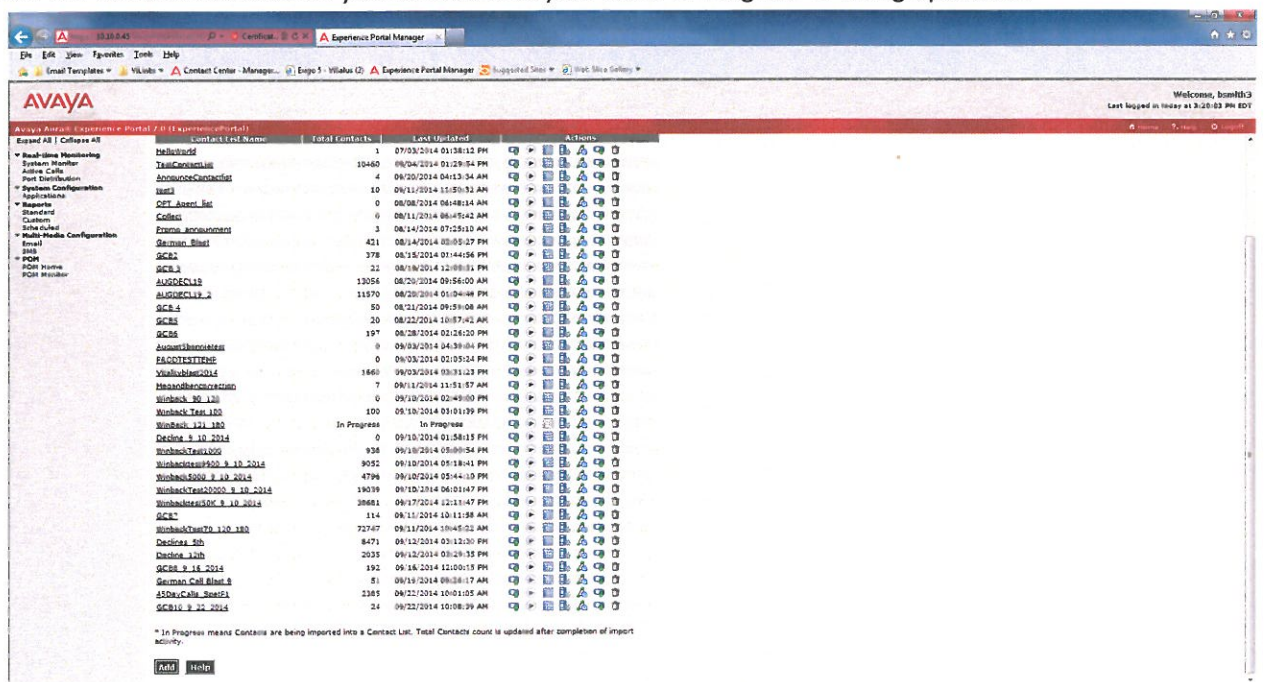
How to Start a campaign with the correct Contact List

1) Log In To POM
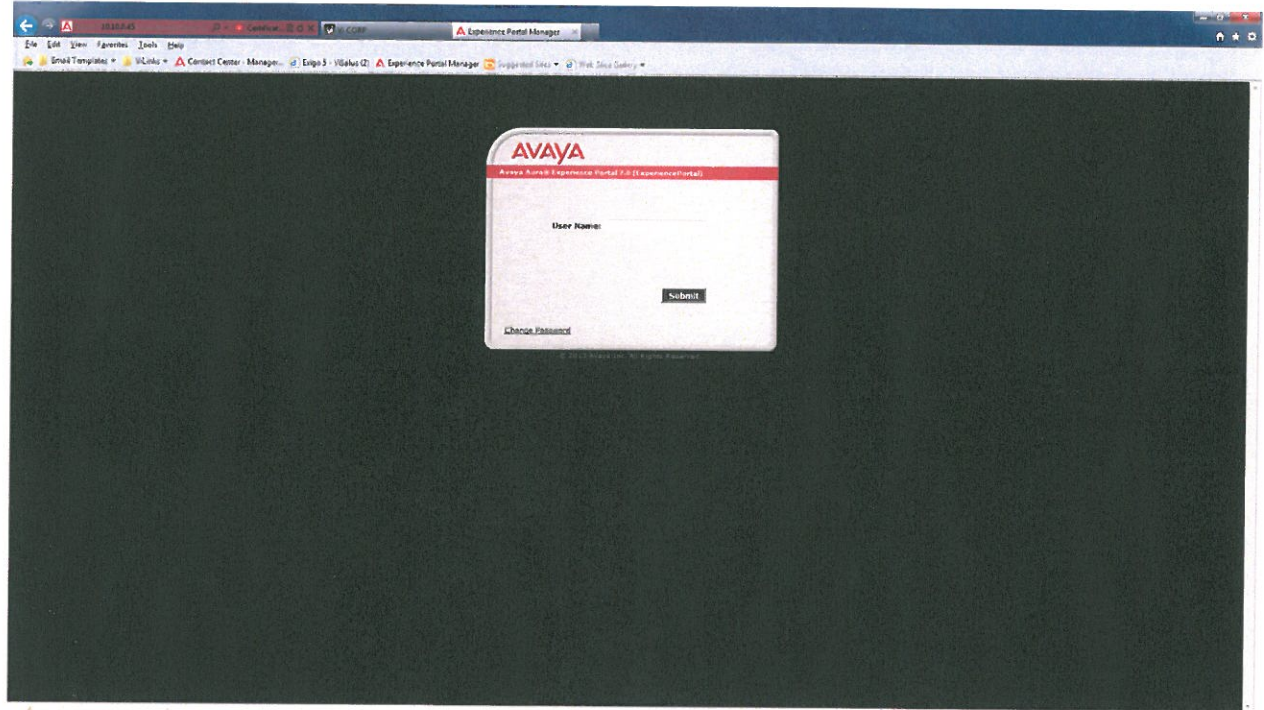
2) Click on Home on the Left Side of the screen
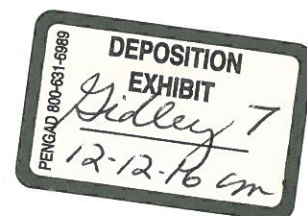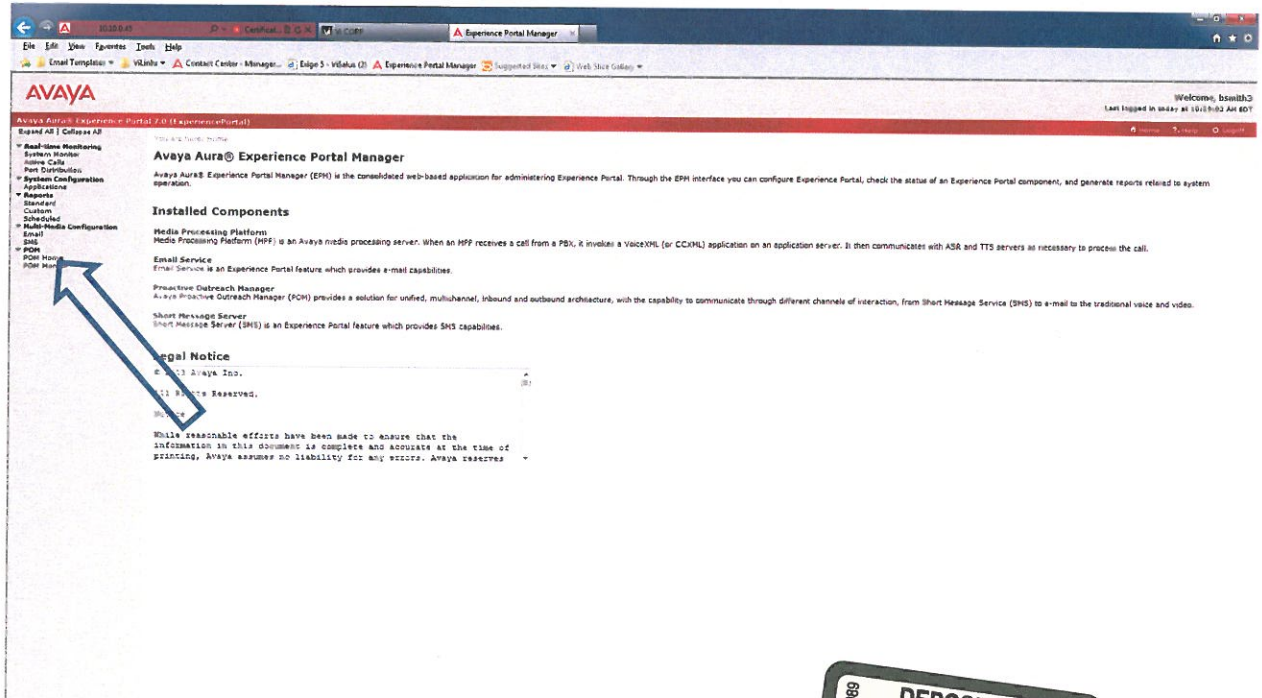
3) Select Campaign Manager
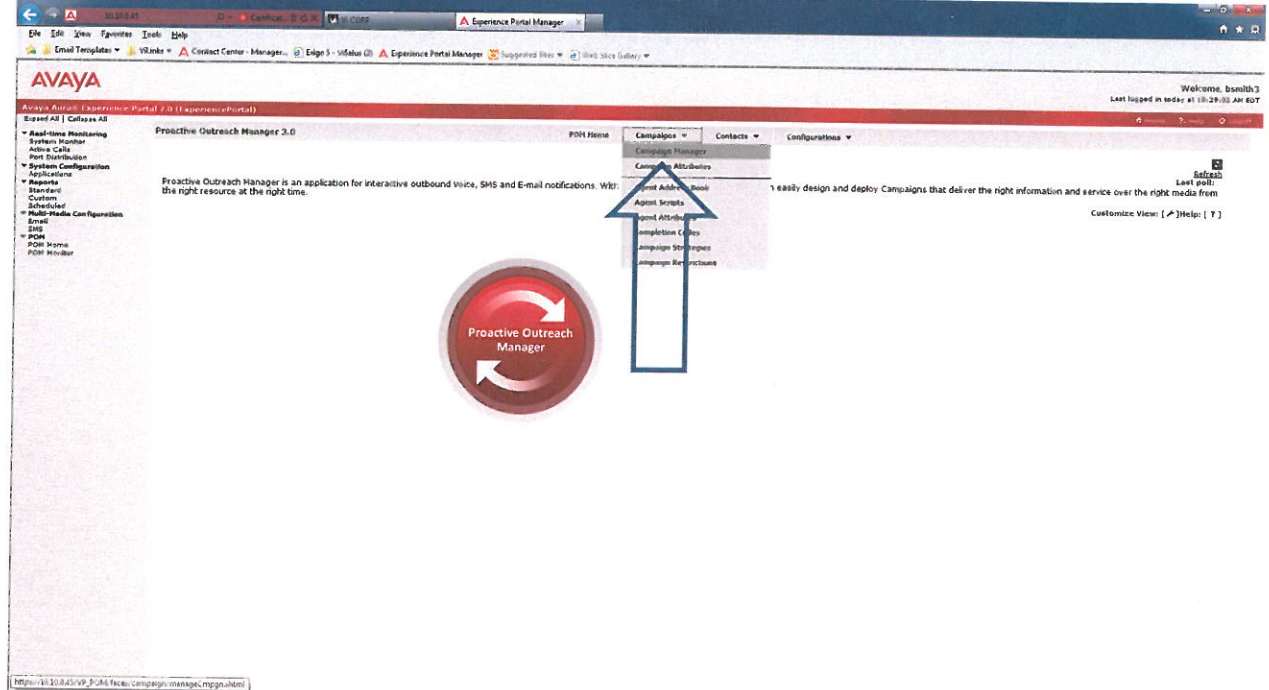
4) Find the correct campaign name
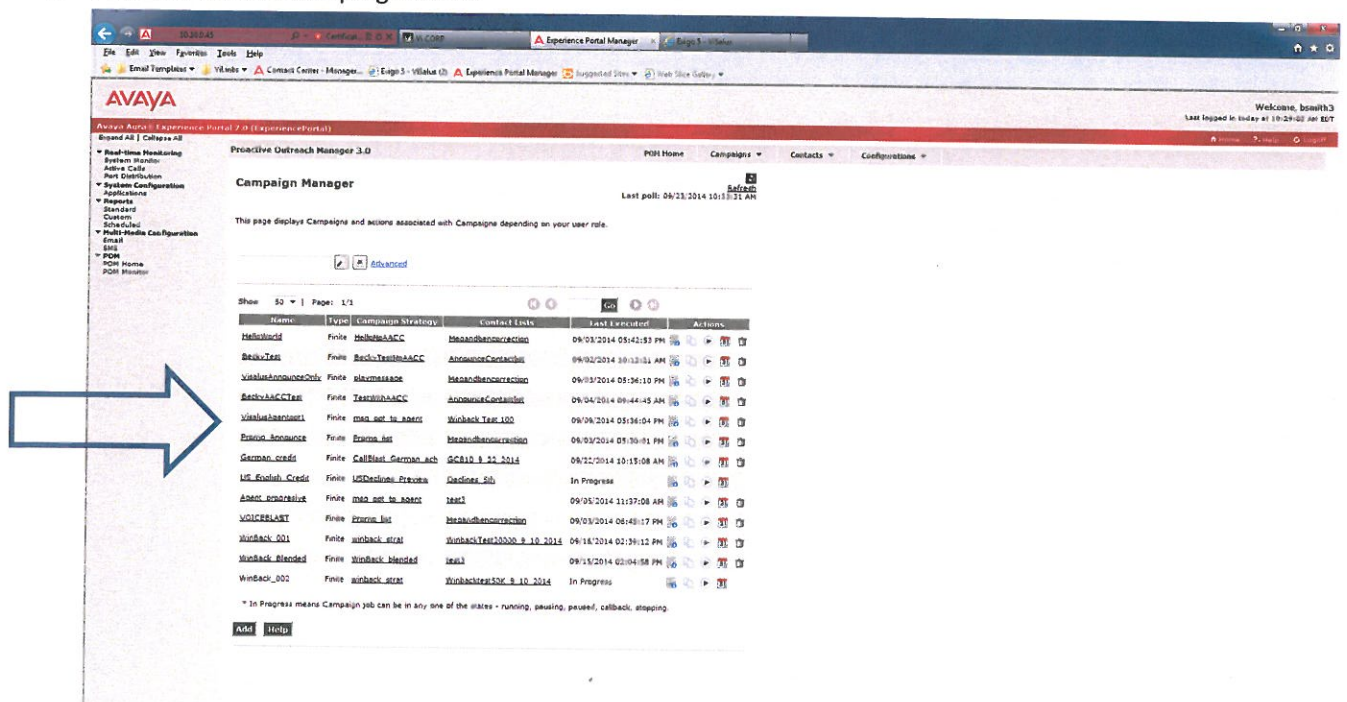
5) Make sure the correct contact list is loaded

6) Click on the play button

7) Click on Monitor and verify Campaign is running

How to Pause, Resume and Stop a Campaign from running in POM

1) Log in to POM
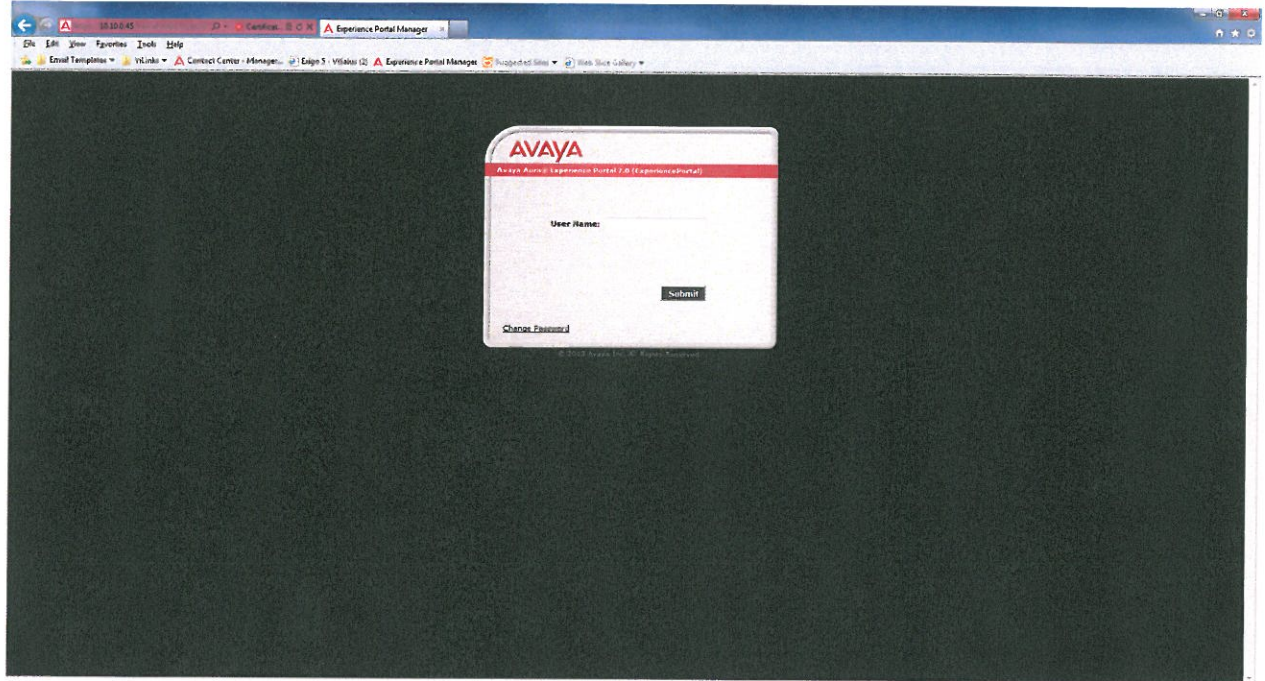
2) Select Monitor on the left side of the screen
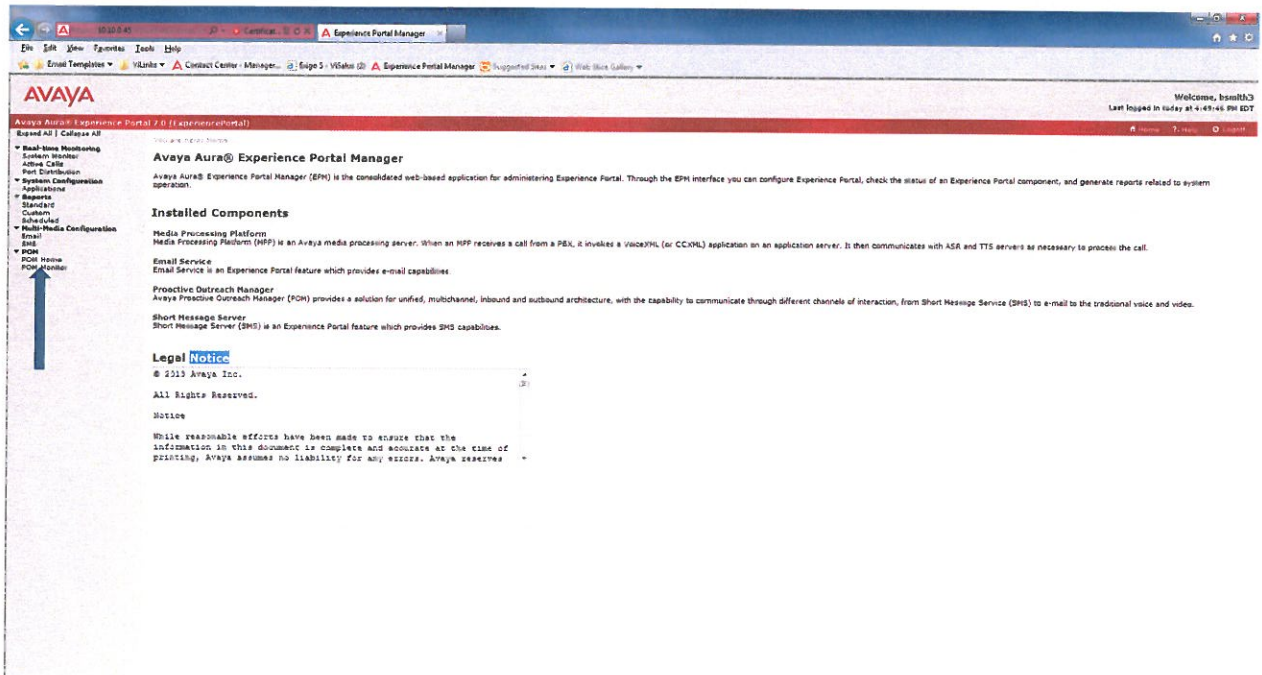
3) If a campaign is Paused and you want to resume the campaign click the Paused Campaign
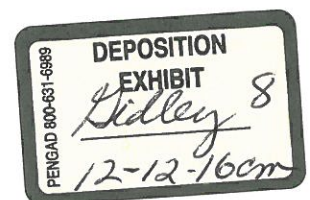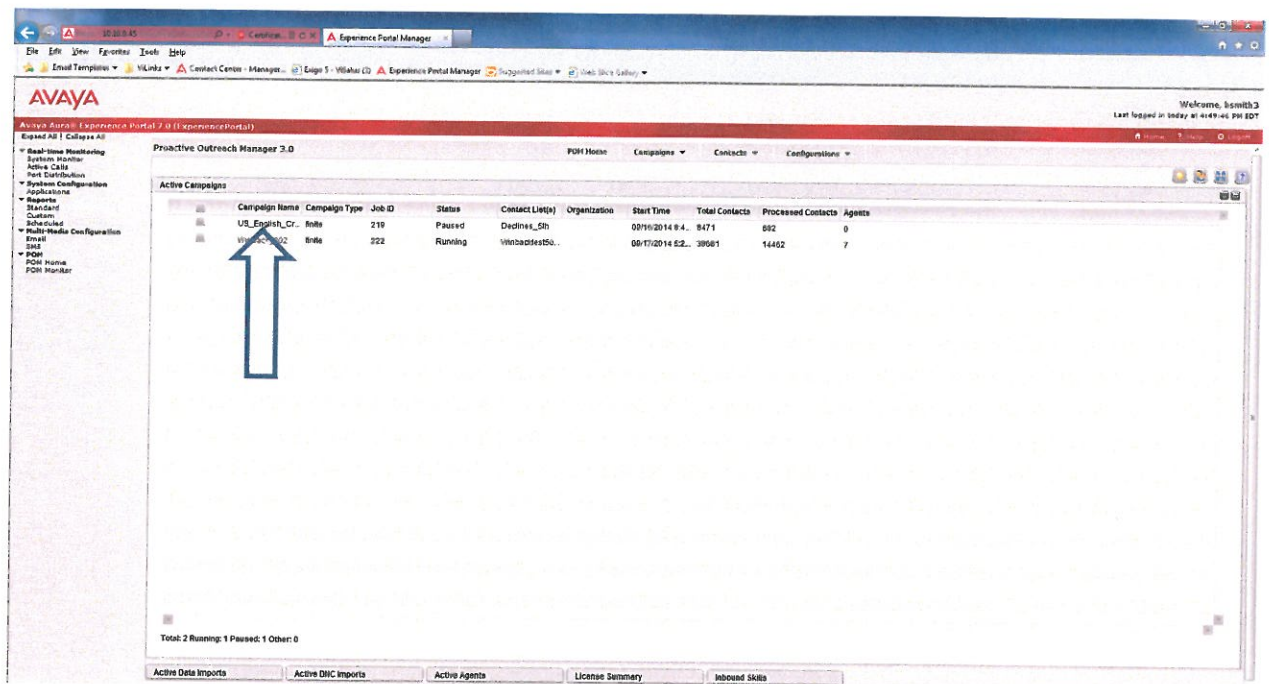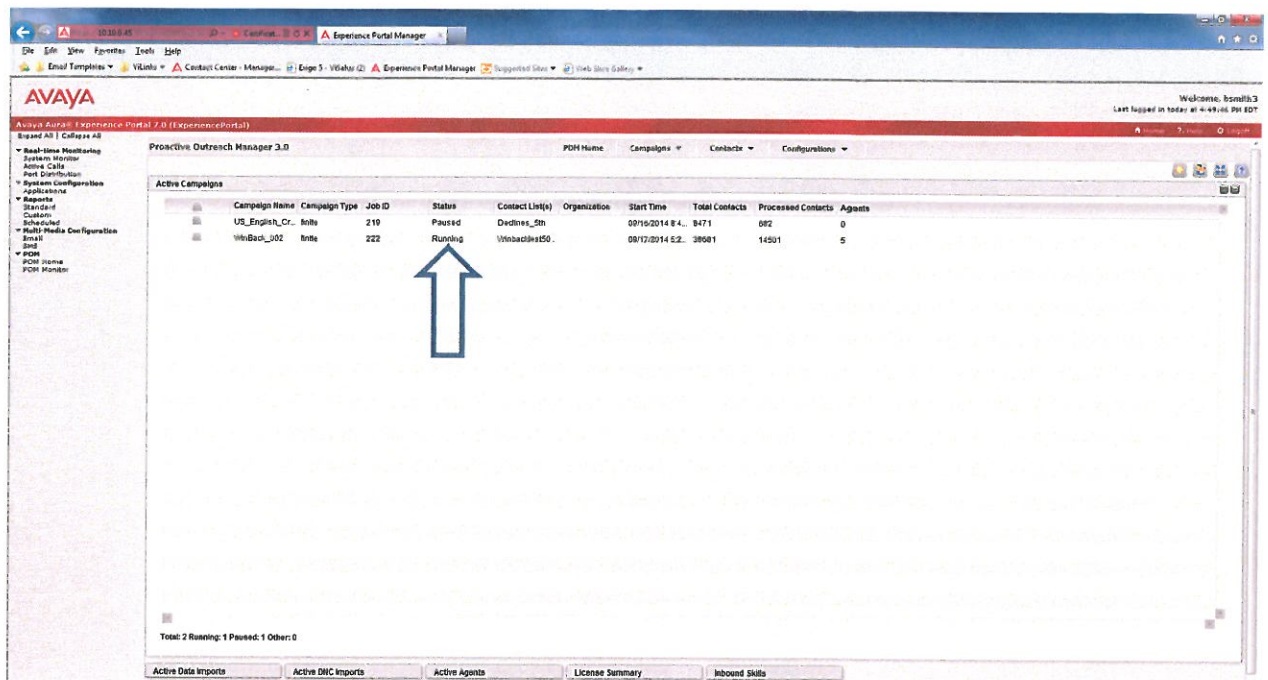
4) Select Resume and the campaign will pick up where it was paused from. Similar to pausing a song
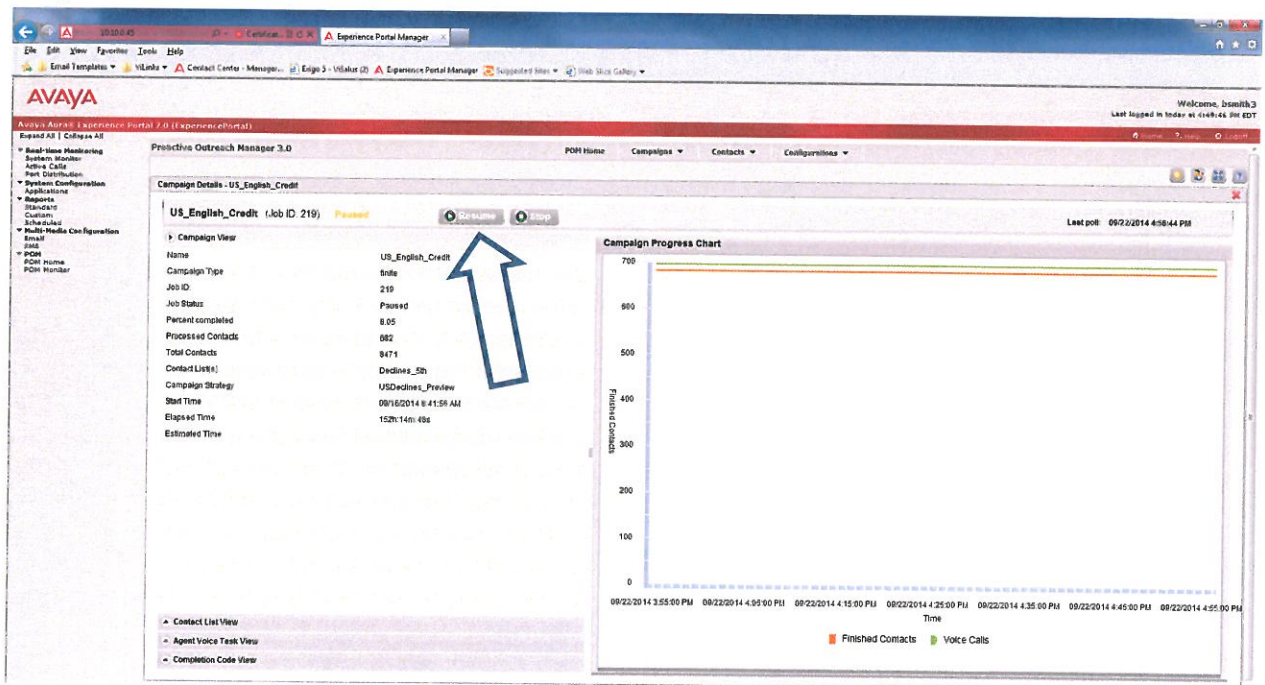
5) If a campaign is in progress and you want to Pause or Stop it. Select a campaign that is in running status
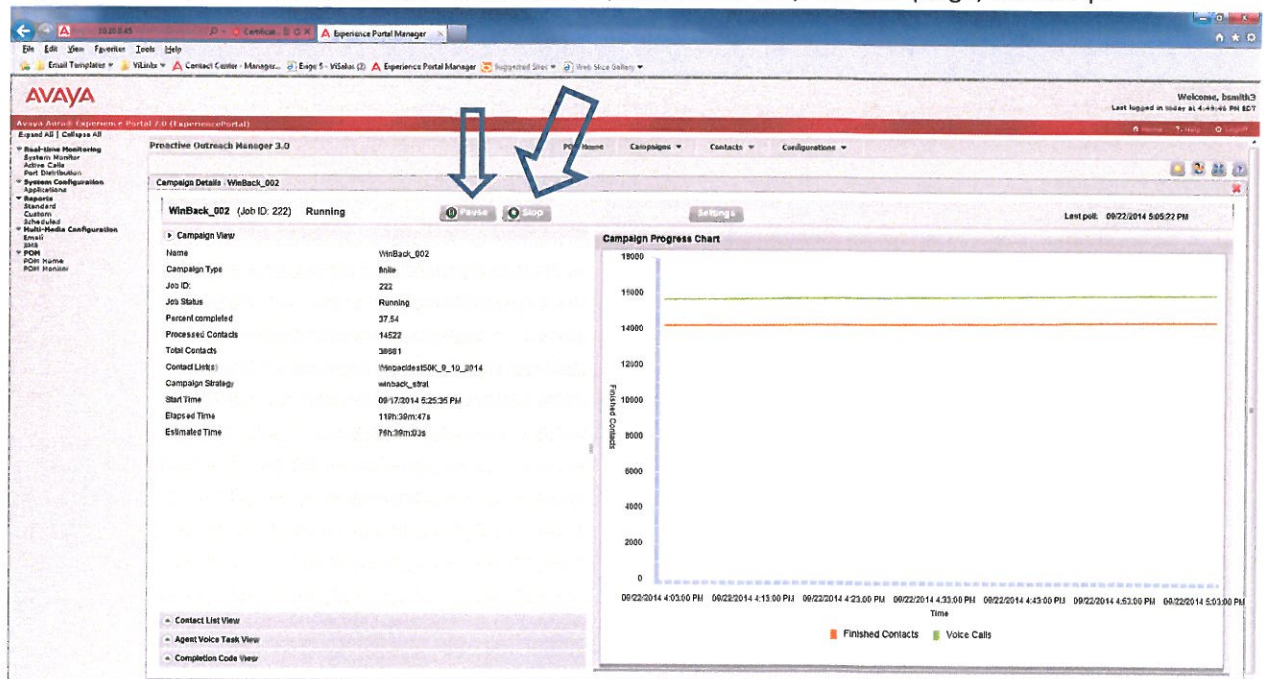
6) If you want to pause the campaign, click Pause. If you want to stop the campaign, click Stop.

EXHIBIT B

```
 1              UNITED STATES DISTRICT COURT
                   DISTRICT OF OREGON
 2

 3  LORI WAKEFIELD, on behalf of
    themselves and a class of
 4  others similarly situated,

 5      Plaintiff,                    No. 3:15-cv-01857-BR

 6  V.

 7  VISALUS, INC., a Nevada
    Corporation,
 8
        Defendant.
 9

10

11

12  ************************************************************

13             ORAL DEPOSITION OF JUSTIN CALL

14                    VOLUME 1

15  ************************************************************

16

17      ANSWERS AND DEPOSITION OF JUSTIN CALL, produced as

18  a witness at the instance of the Plaintiff, taken in the

19  above-styled and -numbered cause on the 20th day of

20  January, 2017, A.D., beginning at 9:57 a.m., before

21  Brandy Cooper, a Certified Shorthand Reporter in and for

22  the State of Texas, in the offices of Esquire Deposition

23  Solutions, located at 1700 Pacific Avenue, Suite 1000,

24  Dallas, Texas, in accordance with the Federal Rules of

25  Civil Procedure and the agreement hereinafter set forth.
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1   A.   Well --

2   Q.   Sorry. Go ahead.

3   A.   No, go ahead. POM is not the only way to play

4 a prerecorded message, but as far as to my awareness and

5 any involvement, that would be what it was limited to is

6 the POM instance of that. There's lots of different

7 things that do prerecorded messages.

8   Q.   Did Visalus use any of the other mechanisms

9 that you've identified?

10   MS. ANCHORS: Foundation.

11   A.   I mean, we -- yeah, we've done voice casting

12 before, yes.

13   Q.   (BY MR. POLLOCK) Okay.

14   A.   With -- it's basically just a message saying

15 your credit card declined, please contact us.

16   Q.   When did Visalus begin using voice casting?

17   MS. ANCHORS: Foundation.

18   A.   I don't know.

19   Q.   (BY MR. POLLOCK) Prior to beginning to use

20 POM?

21   A.   I'm not -- I don't know. I mean, I just don't

22 know. We used it with POM. We just called it voice

23 casting, you know, it was with POM or with -- you know,

24 so that's just -- that was the terminology that we used,

25 voice casting.

1   Q.   Okay. And then the prerecorded messages

2   whether they were sent via voice cast, POM or some

3   other --

4   MS. ANCHORS: Form.

5   A.   And voice casting, I'm saying that's what I

6   called them with POM.

7   Q.   (BY MR. POLLOCK) Got it.

8   A.   Like let's send a voice cast out through POM.

9   Q.   Okay. So for the messages for the voice casts,

10   who created those messages?

11   A.   I can -- I mean, the only one I can recall

12   specifically was one that Blake -- Blake did about

13   registering for an event. And I know we had -- I know

14   we had one for the declined credit cards, but I don't

15   recall who did that message.

16   Q.   Are you aware of any voice casts done in

17   conjunction with a Winback campaign?

18   A.   Not that I specifically recall.

19   Q.   Okay. So I want to go ahead and play an audio

20   clip for you.

21   A.   Okay.

22   Q.   Let me restart that.

23   (Audio portion was played.)

24   Q.   (BY MR. POLLOCK) Have you ever heard that

25   message before?

1 end of 2015 when the outreach team existed?

2   A.   So it was a pretty short window of time. So

3 wanted to try everybody because we wanted -- you know,

4 we wanted -- you don't get all the rates. Your open

5 rates on e-mails are pretty small so you want to try to

6 reach more people because obviously it's good for the

7 company if people come back. And it's good for them if

8 they can come back to do something they've purchased at

9 full price and come back and do it half price. And we

10 quickly realized that the old ones don't -- aren't

11 productive, and we don't have enough people and enough

12 manpower to hit them all anyway, so we focused on the

13 more recent three-to-nine-month period.

14   Q.   Okay. So when a campaign was started and

15 people were receiving calls, say a Winback campaign, do

16 you have any understanding as to what the first thing

17 that the call recipient would hear would be?

18   A.   I don't.

19   Q.   Okay. Do you know what a Press One campaign

20 is?

21   A.   Yes.

22   Q.   What is a Press One campaign?

23   A.   It's -- if you Press One to be connected to a

24 live person now.

25   Q.   Is that typically how Winback campaigns were

1 STATE OF TEXAS)

2   I, Brandy Cooper, a Certified Shorthand Reporter

3 duly commissioned and qualified in and for the State of

4 Texas, do hereby certify that there came before me on

5 the 20th day of January, A.D., 2017, at 9:57 a.m., at

6 the offices of Esquire Deposition Solutions, located at

7 1700 Pacific Avenue, Suite 1000, in the City of Dallas,

8 State of Texas, the following named person, to wit:

9 JUSTIN CALL, who was by me duly cautioned and sworn to

10 testify the truth, the whole truth and nothing but the

11 truth, of knowledge touching and concerning the matters

12 in controversy in this cause; and that he was thereupon

13 carefully examined upon his oath, and his examination

14 was reduced to writing under my supervision; that the

15 deposition is a true record of the testimony given by

16 the witness.

17   I further certify that the witness has requested a

18 review pursuant to Rule 30(e)(2).

19   I further certify that I am neither attorney or

20 counsel for, nor related to or employed by any of the

21 parties to the action in which this deposition is taken,

22 and further that I am not a relative or employee of any

23 attorney or counsel employed by the parties hereto, or

24 financially interested in the action.

25   CERTIFIED TO BY ME on this 23rd day of January,

```
 1   2017.

 2

 3
                          _____
 4                        BRANDY COOPER, CSR
                          Certification Expires 12-31-2018
 5                        Firm Registration No. 286
                          1700 Pacific Avenue, Suite 1000
 6                        Dallas, Texas   75201
                          (214) 257-1436
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12   Taxable cost of original charged to Plaintiff:
     $_____
13   Attorney:   Mr. Pollock

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